

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONA M. MAHURIN and DEPARTMENT OF THE ARMY,
FORT RICHARDSON FIRE DEPARTMENT, Anchorage, Alas.

*Docket No. 96-2551; Submitted on the Record;
Issued September 25, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability causally related to her October 26, 1994 employment injury.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that she sustained a recurrence of disability causally related to her October 26, 1994 employment injury.

On October 26, 1994 appellant, then a firefighter, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a groin pull on the left side when a piece of carpet slipped as she stepped onto it. Appellant stopped work on October 28, 1994.

On January 4, 1995 the Office of Workers' Compensation Programs accepted appellant's claim for a groin and lumbar strain.

On December 18, 1995 appellant accepted the employing establishment's December 13, 1995 offer for the position of office automation assistant. Appellant returned to the light-duty position on December 20, 1995. Appellant stopped work on December 23, 1995 due to pain.

On February 9, 1996 appellant rejected the employing establishment's February 6, 1996 offer of the position of office automation assistant due to back pain.

By decision dated April 9, 1996, the Office found the medical evidence of record insufficient to establish that appellant was totally disabled from the light-duty position of office automation assistant.

In a May 1, 1996 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence. By decision dated May 7, 1996, the Office denied appellant's request for reconsideration without a review of the merits of the claim on the grounds

that the evidence submitted was irrelevant and repetitious, and thus, insufficient to warrant review of the prior decision.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of substantial, reliable and probative evidence and to show that he or she cannot perform the light duty.¹ As part of her burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.²

In the present case, appellant has neither shown a change in the nature and extent of her injury-related condition or a change in the nature and extent of the light-duty requirements. Appellant has submitted the medical treatment notes, a disability certificate and medical reports of Dr. Charles E. Manwiller, a Board-certified family practitioner and appellant's treating physician, in support of her allegation that she is totally disabled from performing the light-duty position of office automation assistant. Dr. Manwiller's medical treatment notes covering the period January 10 through April 5, 1996 revealed that appellant experienced chronic low back pain and was unable to return to work. In a February 19, 1996 disability certificate, Dr. Manwiller indicated that appellant was unable to return to work due to low back pain involving sitting, standing and walking for the period January 29 through February 19, 1994 and for the next 40 days. Dr. Manwiller's medical treatment notes and disability certificate are insufficient to establish appellant's burden inasmuch as they failed to address a causal relationship between appellant's current back condition and the October 26, 1994 employment injury.

Dr. Manwiller's January 30, 1996 attending physician's supplemental report (Form CA-20a) revealed a diagnosis of chronic back pain. He opined that appellant was unable to resume work with minimal physical expectations due to the work-related low back pain. Dr. Manwiller concluded that appellant's prognosis was poor for complete resolution of the problem. In Forms CA-20a dated February 20, 1996, and April 1, 15 and 29, 1996, Dr. Manwiller diagnosed chronic musculoskeletal low back strain and chronic pain syndrome. He reiterated his opinion that appellant's conditions were due to the work-related low back pain and that appellant's prognosis was poor for resolution of the problem. Dr. Manwiller's reports failed to provide any medical rationale for his opinion that appellant's current back condition was caused by the October 26, 1994 employment injury.

In a February 28, 1996 medical report, Dr. Manwiller noted a history of appellant's employment injury and medical treatment, a review of medical records, and his findings on physical examination. He diagnosed chronic musculoskeletal low back strain and chronic pain syndrome. Dr. Manwiller opined that full or partial recovery was not expected, that appellant was unable to perform light-duty activities noting appellant's physical restrictions on and off the job. He further opined that appellant's "painful low back condition has persisted for 16 months

¹ *Terry R. Hedman*, 38 ECA 222, 227 (1986).

² *Id.*

from the date of injury and has not changed appreciably with treatment in the past year in spite of appraisal and treatment by several orthopedic doctors, a doctor of physical and rehabilitative medicine, two family physicians and a pain management program.” Dr. Manwiller stated that his recommendation prohibiting appellant from working was based on appellant’s failure to accomplish even minimal work activities after extensive rehabilitative and pain management. He failed to address whether appellant’s current back condition was caused by the October 26, 1994 employment injury. Further, Dr. Manwiller indicated that within 16 months from the date of injury, appellant’s condition “has not appreciably changed with treatment in the past year” notwithstanding extensive medical treatment.

As no further probative medical evidence supporting appellant’s alleged recurrence of total disability was submitted, appellant has failed to establish that she sustained any compensable recurrence of disability causally related to the October 26, 1994 employment-related groin and back injuries.³

The May 7 and April 9, 1996 decisions of the Office of Workers’ Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
September 25, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

³ The Board notes that the Office received additional evidence subsequent to its May 7, 1996 decision. The Board, however, cannot consider this evidence, inasmuch as the Board’s review of the case is limited to the evidence of record which was before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office with a formal request for reconsideration; *see* 20 C.F.R. § 501.7(a).